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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

17 CR 350 (KBF)

5 LEVAN MAKASHVILI,

6 Defendant.

7 -----x

8 New York, N.Y.

9 April 20, 2018

2:30 p.m.

10 Before:

11 HON. ONA T. WANG,

12 Magistrate Judge

13 APPEARANCES

14 GEOFFREY S. BERMAN

15 Interim United States Attorney for the  
16 Southern District of New York

ANDREW C. ADAMS

17 Assistant United States Attorney

18 XAVIER R. DONALDSON

19 Attorney for Defendant

20 ALSO PRESENT: Maya Beridze, Georgian Interpreter

Special Agent Robert Hanratty, FBI

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1 (Defendant's responses are in English unless otherwise  
2 noted)

3 THE DEPUTY CLERK: United States v. Makashvili, 17 CR  
4 350. Counsel, please state your appearances for the record.

5 MR. ADAMS: Good afternoon, your Honor. Andrew Adams  
6 for the United States, and with me at counsel table is Special  
7 Agent Robert Hanratty of the FBI.

8 MR. DONALDSON: For Mr. Makashvili, Xavier R.  
9 Donaldson, good afternoon. Good afternoon Mr. Adams, good  
10 afternoon, law enforcement.

11 THE COURT: Good afternoon. I am Magistrate Judge  
12 Wang.

13 Mr. Makashvili, are you able to hear and understand  
14 what the interpreter is telling you?

15 THE DEFENDANT: Yes.

16 THE COURT: I have before me a consent to proceed  
17 before a United States magistrate judge on a felony plea  
18 allocution that you have signed. What this form says is that,  
19 knowing you have the right to have this plea taken by a United  
20 States district judge, you're agreeing to have the plea taken  
21 by a United States magistrate judge. As a magistrate judge, I  
22 have the authority to take your plea with your consent, and you  
23 would still be entitled to all of the same rights and  
24 protections as if you were before a district judge. Among  
25 other things, if you're found guilty, you will be sentenced by

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1 a district judge.

2 Did you sign the consent to proceed before a United  
3 States magistrate judge voluntarily?

4 THE DEFENDANT: Yes.

5 THE COURT: Before you signed the form, did your  
6 lawyer explain it to you?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you wish to proceed with your plea  
9 before a United States magistrate judge?

10 THE DEFENDANT: Yes.

11 THE COURT: Your consent is accepted.

12 The purpose of this proceeding is to make sure that  
13 you understand your rights, to decide whether you're pleading  
14 guilty of your own free will, and to make sure that you are  
15 pleading guilty because you are guilty and not for some other  
16 reason.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: If at any time you don't understand any of  
20 my questions, or if you wish to consult with your attorney,  
21 just say so. Because it is important that you understand every  
22 question before you answer.

23 Before I take your plea, I must ask you a series of  
24 questions and I therefore need to place you under oath. Please  
25 raise your right hand.

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1 (Defendant sworn)

2 THE COURT: Mr. Makashvili, do you understand that any  
3 statements you make here today under oath may be used against  
4 you in a prosecution for perjury or for making false statements  
5 if you do not tell the truth?

6 THE DEFENDANT: Yes.

7 THE COURT: Did you sign this waiver of indictment?

8 THE DEFENDANT: Yes.

9 THE COURT: Before you signed it, did you discuss it  
10 with your attorney?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand what you are doing?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that you are under no  
15 obligation to waive indictment?

16 THE INTERPRETER: I'm sorry, your Honor. Could you  
17 repeat it, please?

18 THE COURT: Do you understand that you are under no  
19 obligation to waive indictment?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that if you do not waive  
22 indictment, if the government wants to prosecute you, they  
23 would have to present this case to a grand jury, which may or  
24 may not indict you?

25 THE DEFENDANT: Yes.

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1 THE COURT: Do you realize that by signing this waiver  
2 of indictment, you have given up your right to have this case  
3 presented to a grand jury?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand what a grand jury is?

6 THE INTERPRETER: This is the interpreter. I don't  
7 think he knows.

8 (Defendant conferring with his counsel)

9 THE DEFENDANT: Yes.

10 THE COURT: Have you seen a copy of the information?

11 THE DEFENDANT: Yes.

12 THE COURT: Was it read or translated for you?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you waive its public reading?

15 THE INTERPRETER: I'm sorry waive -- what?

16 THE COURT: "Waive" meaning to give up.

17 THE INTERPRETER: So it means he lose the right?

18 MR. DONALDSON: Does he want it read out loud.

19 THE INTERPRETER: Thank you very much.

20 THE DEFENDANT: No.

21 THE COURT: Wait. You want me to read it publicly?

22 MR. DONALDSON: No. No, we do not.

23 THE COURT: Okay.

24 MR. DONALDSON: He said no.

25 THE DEFENDANT: No.

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1 THE COURT: He waives the public reading then?

2 MR. DONALDSON: Yes.

3 THE COURT: Yes, okay.

4 How do you plead to the information, guilty or not  
5 guilty?

6 THE DEFENDANT: I plead guilty.

7 THE COURT: Tell me your full name.

8 THE DEFENDANT: Levan Makashvili.

9 THE COURT: What is your age?

10 THE DEFENDANT: 29.

11 THE COURT: Are you a citizen of the United States?

12 I need a verbal answer.

13 THE DEFENDANT: No.

14 THE COURT: What country are you a citizen of?

15 THE DEFENDANT: Georgia.

16 THE COURT: Are you able to read and write in English?

17 THE DEFENDANT: A bit.

18 THE COURT: What is your native language?

19 THE DEFENDANT: Levan.

20 Georgian.

21 THE COURT: Are you able to read and write in  
22 Georgian?

23 THE DEFENDANT: Yes, yes.

24 THE COURT: How far did you go in school?

25 THE DEFENDANT: (Through the interpreter) I went to

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1 college, I graduated from college, and I graduated from high  
2 school, too.

3 THE COURT: Are you now or have you recently been  
4 under the care of a doctor or a psychiatrist for any reason?

5 THE DEFENDANT: No.

6 THE COURT: Have you been treated recently for any  
7 mental illness or addiction to narcotic drugs of any kind?

8 THE DEFENDANT: I never smoke, never drink, never  
9 nothing. I'm a fighter.

10 THE COURT: As you sit here today, are you under the  
11 influence of any mind-altering drug or any alcoholic drink?

12 THE DEFENDANT: Never, never. No.

13 THE COURT: Have you been able to understand  
14 everything I have said to you so far?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you feel all right today?

17 THE DEFENDANT: Yes.

18 THE COURT: You have seen a copy of the information in  
19 this case, right?

20 THE DEFENDANT: Yes.

21 THE COURT: I think we've been through this, but  
22 you've read it and it's been translated for you?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand what it says that you  
25 did?

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1 THE DEFENDANT: Yes.

2 THE COURT: Have you had a chance to discuss the  
3 charges and how you wish to plead with your attorney?

4 THE DEFENDANT: Yes.

5 THE COURT: Are you satisfied with your attorney's  
6 representation of you?

7 THE DEFENDANT: Yes.

8 THE COURT: Have you had a full opportunity to discuss  
9 this case with him?

10 THE DEFENDANT: Yes.

11 THE COURT: Has he told you the consequences of  
12 pleading guilty?

13 THE DEFENDANT: Yes.

14 THE COURT: Are you ready to enter a plea?

15 THE DEFENDANT: Yes.

16 THE COURT: Count One of the information charges that  
17 you, Mr. Makashvili, with interstate travel to facilitate an  
18 unlicensed gambling business.

19 How do you wish to plead, guilty or not guilty?

20 THE DEFENDANT: Guilty.

21 THE COURT: Okay. With respect to Count One of the  
22 information, I want you to understand that the maximum penalty  
23 is a prison term of five years, a maximum term of supervised  
24 release of three years, a maximum fine of the greatest of  
25 \$250,000.



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1 THE INTERPRETER: I'm sorry, your Honor. He asked  
2 something. I missed what you say.

3 THE COURT: I'm sorry.

4 THE INTERPRETER: So could you repeat it, please?

5 THE COURT: Okay. I'm going to run through a list of  
6 the maximum penalties that may be assessed in connection with a  
7 guilty plea to this crime. That is the maximum sentence that a  
8 Court could impose by law.

9 MR. DONALDSON: Could we just have one second.

10 (Defendant conferring with his counsel)

11 MR. DONALDSON: Sorry, Judge. Go ahead.

12 THE COURT: Everything all right?

13 MR. DONALDSON: Yes.

14 THE COURT: Okay. Okay. So, I'm going to start over  
15 again and I'm going to list the maximum penalties, because I  
16 want to make sure that you are aware of them and that I didn't  
17 miss any of them.

18 So again, with respect to Count One of the  
19 information, I want you to understand that the maximum penalty  
20 of imprisonment is five years, the maximum term of supervised  
21 release is three years. There is a maximum fine of the  
22 greatest of \$250,000 or twice the gross pecuniary gain derived  
23 from the offense --

24 THE INTERPRETER: I'm sorry, I don't understand. What  
25 does it mean?

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1 THE COURT: Twice the gross pecuniary gain. So twice  
2 the monetary gain.

3 THE INTERPRETER: Ah, okay. Thank you.

4 THE COURT: Or twice the gross pecuniary loss to  
5 persons other than the defendant, and a \$100 mandatory special  
6 assessment. In addition, the Court must order restitution to  
7 any victims.

8 Do you understand these maximum penalties that I've  
9 just described to you?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you also understand that if, as part of  
12 your sentence, you are placed on a term of supervised release  
13 and then you violated any of the conditions of that release,  
14 you could face an additional term of imprisonment?

15 THE DEFENDANT: Yes.

16 THE COURT: The district judge can revoke the term of  
17 release previously imposed, and return you to prison without  
18 giving you any credit for time previously served.

19 THE DEFENDANT: I understand.

20 THE COURT: You would not get any credit for time  
21 previously served on post-release supervision.

22 If you're not a United States citizen, do you  
23 understand that your guilty plea may result in your being  
24 removed from the United States, denied citizenship, and denied  
25 admission to the United States in the future?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that you're bound by  
3 your guilty plea regardless of the immigration consequences of  
4 your plea and regardless of any advice that you may have  
5 received from your counsel or others regarding those  
6 consequences?

7 THE DEFENDANT: Yes.

8 THE COURT: Have you specifically discussed the  
9 immigration consequences with your attorney?

10 THE DEFENDANT: Yes.

11 THE COURT: I'm now going to explain certain  
12 Constitutional rights that you have. These are rights that you  
13 will be giving up if you enter a guilty plea. Please listen  
14 carefully to what I'm about to say, and if you do not  
15 understand something, stop me, and your attorney and I will  
16 explain the issue more fully.

17 Do you understand that you have a right to plead not  
18 guilty?

19 THE DEFENDANT: Yes.

20 THE COURT: Or if you have already so pleaded, to  
21 persist in that plea, and a right to a speedy and public jury  
22 trial if you wish -- yes?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that if you plead not  
25 guilty and go to trial, you would be presumed innocent, and the

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1 burden would be on the government to prove your guilt beyond a  
2 reasonable doubt?

3 THE DEFENDANT: Yes.

4 THE COURT: That means that you would not have to  
5 prove you were innocent, and you could not be convicted unless  
6 a jury of 12 people unanimously agreed that you were guilty  
7 beyond a reasonable doubt.

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that you would be  
10 entitled to be represented by an attorney at all stages at  
11 trial, and at every other stage of the proceedings. And if you  
12 could not afford to hire one, an attorney would be provided to  
13 you by the Court for free.

14 Do you understand that at such a trial, you would be  
15 entitled to confront and cross-examine any witnesses called by  
16 the government to testify against you, that you would be  
17 entitled to testify on your own behalf, that you could call  
18 witnesses and present evidence, and that the Court would issue  
19 subpoenas at your request to compel witnesses to appear and  
20 testify in your defense even if they didn't want to come?

21 THE DEFENDANT: Yes.

22 THE COURT: Please keep your voice up if you're going  
23 to say "yes," or let the interpreter know.

24 Do you understand that at a trial you would not be  
25 required to testify against yourself?

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1 THE DEFENDANT: Yes.

2 THE COURT: If you chose not to testify, that could  
3 not be used against you.

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that if you were  
6 convicted at a trial, you have a right to appeal that verdict  
7 to a higher court?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that if you enter a  
10 guilty plea, you give up all of these rights, including your  
11 right to a trial, that you will not be able to withdraw this  
12 plea --

13 THE DEFENDANT: Yes.

14 THE COURT: -- and that the only remaining step in  
15 this case will be the sentencing?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that the decision as to  
18 the appropriate sentence in your case will be entirely up to  
19 the sentencing judge, and that she will be limited only by what  
20 the law requires?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that even if you are  
23 surprised or disappointed by your sentence, you will still be  
24 bound by your guilty plea?

25 THE DEFENDANT: Yes.

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1 THE COURT: Finally, if you do plead guilty, you're  
2 also giving up your right not to incriminate yourself.

3 THE DEFENDANT: Yes.

4 THE COURT: And I will ask you questions about what  
5 you did in order to satisfy myself that you are actually  
6 guilty.

7 THE DEFENDANT: Yes.

8 THE COURT: By pleading guilty, you will be admitting  
9 your factual as well as your legal guilt. Do you understand  
10 that?

11 THE DEFENDANT: Yes.

12 THE COURT: Knowing all this, do you still wish to  
13 plead guilty to Count One of the information?

14 THE DEFENDANT: Yes.

15 THE COURT: Have any force or threats been used,  
16 either direct or indirect, to influence how you plead today?

17 THE DEFENDANT: No.

18 THE COURT: I have before me a letter dated April 12,  
19 2018, from the U.S. attorney to your attorney containing a plea  
20 agreement. Has this letter been translated for you?

21 THE DEFENDANT: Yes.

22 THE COURT: Did you sign it on the last page?

23 THE DEFENDANT: Yes.

24 THE COURT: Before you signed it, did you discuss it  
25 with your attorney?

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1 THE DEFENDANT: Yes.

2 THE COURT: Did he explain to you all its terms and  
3 conditions?

4 THE DEFENDANT: Yes.

5 THE COURT: Apart from what is contained in this  
6 letter, have any promises been made to you in order to get you  
7 to plead guilty?

8 THE DEFENDANT: No.

9 THE COURT: In reviewing the plea agreement, I note  
10 that it contains an analysis of how a part of our law of  
11 sentencing known as the sentencing guidelines may impact on any  
12 prison term in your case.

13 Based on that analysis, the agreement states the  
14 conclusion that the guideline sentencing range can be expected  
15 to be from zero to six months.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that the sentencing  
19 judge is not bound by the calculation in the letter, and that  
20 she will be free to do her own calculation, which may result in  
21 a guideline range that is different from the one in the letter?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that no matter what the  
24 sentencing range the sentencing judge believes is called for by  
25 the guidelines, that range is just one of many factors that the

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1 judge will consider in determining your sentence, and that the  
2 judge has discretion to give you a prison sentence below or  
3 above the range, anywhere up to the maximum sentence of  
4 imprisonment of five years?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you also understand that under the  
7 terms of this plea agreement, if the judge sentences you to a  
8 prison term that is six months or less, you're giving up your  
9 right to appeal that sentence or to challenge it in any other  
10 way?

11 THE DEFENDANT: Yes.

12 THE COURT: Also do you understand that the plea  
13 agreement says you cannot appeal any fine of \$20,000 or less,  
14 and that you cannot appeal any lawful sentence of supervised  
15 release?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you also understand that in this letter  
18 you're giving up your right to complain if the government  
19 withheld evidence from your attorney that would have been  
20 helpful to you?

21 THE DEFENDANT: Yes.

22 THE COURT: Is your plea voluntary; that is, made of  
23 your own free will?

24 THE DEFENDANT: Yes.

25 THE COURT: Have any threats been made to influence



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1 how you plead today?

2 THE DEFENDANT: No.

3 THE COURT: Did you in fact commit the offense that is  
4 charged in Count One of the information?

5 THE DEFENDANT: Yes.

6 THE COURT: Before I ask you to tell me what you did,  
7 I'll ask the government to summarize the elements of the  
8 offense, and if they wish, to tell me any evidence that they  
9 would have offered at trial.

10 MR. ADAMS: Thank you, your Honor. There are three  
11 elements with respect to the single charge in this information.  
12 The first is that the defendant traveled interstate; second,  
13 that the travel was done with the intent to promote, manage,  
14 establish or carry on an unlawful activity, which is a defined  
15 term in the statute; and third, that after the interstate  
16 travel, the defendant performed or attempted to perform an act  
17 in furtherance of the same unlawful activity. And here the  
18 unlawful activity in question is a violation of 18, U.S.C.  
19 Section 1955, which prohibits the operation of unlawful  
20 gambling businesses.

21 With respect to proof at trial, were the government to  
22 proceed, the proof would include surveillance performed by  
23 agents of the FBI with respect to Mr. Makashvili and others  
24 involved in the unlawful gambling business, ledgers and  
25 documentation from the unlawful gambling business itself,

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1 geolocation data related to cellular telephones belonging to  
2 various members of the conspiracy relating to the unlawful  
3 gambling business, and the testimony of several cooperating  
4 witnesses and confidential sources, including with respect to  
5 Mr. Makashvili's role.

6 THE COURT: How would the government show that venue  
7 lies in the Southern District of New York?

8 MR. ADAMS: The venue with respect to the specific  
9 charge included travel through the Southern District of New  
10 York, specifically from New Jersey into Brooklyn through the  
11 Southern District.

12 THE COURT: Okay. Thank you.

13 Mr. Makashvili, can you please tell me in your own  
14 words what you did that makes you guilty of the charges against  
15 you.

16 MR. DONALDSON: So, your Honor, with the Court's  
17 permission, Mr. Makashvili and myself have put together a --  
18 authored an allocution for him to read. It is in English. So  
19 he can't read it in English. So, we've had the interpreter  
20 read it verbatim to Mr. Makashvili on several occasions.

21 So what I would like to do is read it in English, and  
22 then the court reporter can get it, and the interpreter will be  
23 interpreting what I'm reading to Mr. Makashvili, and then we  
24 can ask Mr. Makashvili whether he in fact admits to or agrees  
25 to or if that's his statement.

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1 THE COURT: Does the government have any objection to  
2 that process?

3 MR. ADAMS: No, your Honor. Thank you.

4 THE COURT: Please proceed.

5 MR. DONALDSON: Thank you.

6 "I, Levan Makashvili, on or about May of 2016, was  
7 aware of an unlawful gambling enterprise at the Poker House in  
8 Brooklyn, New York, which was made up of more than five people,  
9 was in existence for more than 30 days, and was operating in  
10 Brooklyn, New York, and elsewhere.

11 "On or about May 2016, I knowingly and unlawfully  
12 traveled from Brooklyn, New York, to New Jersey through  
13 Manhattan and back to Brooklyn for the purpose of assisting  
14 members of the unlawful gambling enterprise promote their  
15 gambling activities in Brooklyn. I drove them from Brooklyn to  
16 New Jersey and then back to Brooklyn.

17 "Once back in Brooklyn, I drove a member of the  
18 unlawful gambling enterprise to a meeting at the Poker House so  
19 that he could continue working on the group's unlawful gambling  
20 activities. I knew what I was doing was unlawful."

21 THE COURT: Mr. Makashvili, your counsel has just read  
22 in English a statement that he represents was prepared with  
23 your assistance, and that the interpreter has translated for  
24 you now.

25 I wanted to ask you if the statements that your

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1 counsel just read into the record were exact and correct.

2 THE DEFENDANT: Yes.

3 THE COURT: And did you really do the things that  
4 Mr. Donaldson read in English?

5 THE DEFENDANT: Yes.

6 THE COURT: Does the government represent that it has  
7 sufficient evidence to establish Mr. Makashvili's guilt beyond  
8 a reasonable doubt?

9 MR. ADAMS: Yes, your Honor.

10 THE COURT: Mr. Donaldson, do you know of any defense  
11 that would prevail at trial or other reason why your client  
12 should not be permitted to plead guilty?

13 MR. DONALDSON: I do not.

14 THE COURT: Do you have any doubt as to  
15 Mr. Makashvili's competence to plead at this time?

16 MR. DONALDSON: I have no doubt about that.

17 THE COURT: And Mr. Makashvili, did you know that what  
18 you were doing was against the law?

19 THE DEFENDANT: Yes.

20 THE COURT: Any further questions either side wants me  
21 to ask?

22 MR. ADAMS: No, your Honor. Thank you.

23 MR. DONALDSON: No, your Honor. Thank you.

24 THE COURT: Is there any reason why I should not  
25 recommend that the district judge accept this plea?

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1 MR. ADAMS: No, your Honor.

2 MR. DONALDSON: No, your Honor.

3 THE COURT: On the basis of the defendant's responses  
4 to my questions and my observations of his demeanor, I find  
5 that he's fully competent to enter an informed plea at this  
6 time. I also conclude that he understands the nature of the  
7 charges and the consequences of the plea.

8 THE DEFENDANT: Yes.

9 THE COURT: Finally, I'm satisfied that his plea is  
10 voluntary and that there is a factual basis for it.  
11 Accordingly, I recommend that the proffered plea to Count One  
12 of the information be accepted.

13 I assume the government will order a copy of the  
14 transcript and will submit it to Judge Forrest.

15 MR. ADAMS: Yes, your Honor.

16 THE COURT: Together with any additional paperwork so  
17 that she may act on my recommendation.

18 A presentence investigation report is ordered.

19 Is there a sentencing date set yet?

20 MR. ADAMS: There is not, your Honor. We would ask  
21 for a control date approximately 90 days out.

22 THE COURT: Okay. That would be July 20. The  
23 prosecution case summary for purposes of the presentence report  
24 is to be delivered to the probation department no later than 14  
25 days from today.

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1 MR. DONALDSON: Excuse me.

2 THE COURT: Just a moment, okay.

3 (Pause)

4 MR. DONALDSON: Judge, with the government's  
5 permission, can we have August 1st as the control date? Two  
6 additional weeks.

7 THE COURT: And the government has no objection?

8 MR. ADAMS: No, your Honor.

9 THE COURT: Control date is now August 1st, 2018.

10 The prosecution case summary for purposes of the  
11 presentence report is to be delivered to the probation  
12 department no later than 14 days from today. Mr. Donaldson,  
13 you should make yourself available to be interviewed by the  
14 probation department with your client no later than 14 days  
15 from today.

16 Is there anything further on this matter from either  
17 side?

18 MR. ADAMS: Nothing from the government, your Honor.

19 MR. DONALDSON: No, your Honor. Thank you.

20 THE COURT: Thank you. This matter is adjourned.

21 (Adjourned)